IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.(NPD-B)No.261 of 2001

The Managing Director,
Metropolitan Transport Corporation Ltd.,
(Chennai Division-I) Ltd, Chennai. ... Appellant/Respondent

vs.

Manikandan ... Respondent/Claiamant

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree, dated 19.12.2000 made in M.A.C.T.O.P.No.3753 of 1996 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Small Causes Court), Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mrs.S.Sarumathy

J U D G M E N T

Aggrieved by the award dated 19.12.2000 made in M.A.C.T.O.P.No.3753 of 1996 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Small Causes Court), Chennai, the Transport Corporation has preferred this appeal.

2. Brief facts leading to the appeal are as follows: On 08.07.1995 about 12.30 hrs, when the respondent/claimant was travelling in a bicycle as a pillion rider, rode by his friend Seeyalasundaram from east to west on the left side of Pallavan Salai, a bus, owned by the appellant-Transport Corporation came from behind in a rash and negligent manner, hit the cycle. The respondent/claimant sustained compressed fracture of L1 vertebra (spinal cord) and injury on the head. He claimed compensation of Rs.9 lakhs.

3. The appellant-Transport Corporation resisted the claim petition, contending inter alia that on 08.07.1995, when the bus, owned by the appellant Transport Corporation was proceeding towards Korukkupet from Vivekananda House and near Muneeswaran Koil, a cyclist came in a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

negligent manner, hit the rear portion of the bus and courted the accident. They further contended that the cyclist accepted his fault and compromised the matter. The accident had occurred solely due to the careless riding of the cyclist and therefore, the Transport Corporation is not liable to pay the compensation.

4. Before the Tribunal, the respondent/claimant examined himself as P.W.1. PW.2 and PW.4 are the doctors, who examined the respondent/claimant with reference to the medical records. PW.3 is the Police Officer. Exs.P1 to P3 – Discharge Summaries; Exs.P4 to P6 (series) – Medical bills; Ex.P5 – Prescription; Ex.P7 – Scan report; Ex.P8– A certificate claiming his disability; Ex.P9 – Disability certificate; Ex.P10 – X-ray; Ex.P11 – First Information Report; Ex.P12 – Sketch and Ex.13 is another Disability certificate were marked on behalf of the respondent/claimant. On behalf of the appellant-Transport Corporation, the driver of the bus was examined as RW.1 and a letter dated 08.07.1995 said to have been written by the respondent/claimant was marked as Ex.B1. Ex.C1 is the summon issued by the Small Causes Court to the Inspector of Police.

5. The Tribunal, on evaluation of pleadings and evidence, found that the driver of the bus, owned by the appellant-Transport Corporation was responsible for the accident and awarded compensation of Rs.5,11,500/- with interest at the rate of 12% per annum.

6. Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant and Mrs.S.Sarumathy, learned counsel for the respondent.

7. Learned counsel for the appellant submitted that the Tribunal has erred in holding that the driver of the bus was responsible for the accident. He further submitted that the accident had occurred only due to the negligent riding of the cyclist. To substantiate the same, he relied on Ex.B1, letter dated 08.07.1994 said to have been written by the respondent/claimant.

8. Placing strong reliance on the above said letter, learned counsel for the appellant submitted that the respondent/claimant himself has admitted in his letter that when cycle got struck in the heap of sand, the cyclist lost his control and hit the rear portion of the bus. He further submitted that the Tribunal ought to have given credence to the evidence of RW.1 and hold that the respondent/claimant was wholly responsible for the accident.

9. Learned counsel for the appellant submitted that F.I.R., dated 25.08.1995 has been belatedly lodged and therefore, it is not reliable. He also submitted that the Tribunal has grossly erred in rejecting the letter dated 08.07.1995 given by the respondent/claimant voluntarily.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. Per contra, learned counsel for the respondent/claimant submitted that the accident occurred only due to the rash and negligent driving of the driver of the bus. She submitted that the oral testimony of the respondent/claimant is corroborated by the criminal case registered against the driver of the bus by the traffic Inspector, Triplicane range. She further submitted that the appellant-Transport Corporation has not raised any plea regarding the heap of sand on the middle of the road; that the cycle got struck in the sand and hit the bus on the rear portion. She further submitted that the finding of the Tribunal is not perverse.

11. The Tribunal rejected Ex.B1 dated 08.07.1995 on the grounds that,

i. The name of the signatory in the letter is different from name of the respondent/claimant.

ii. The word "fallen down" has been inserted.

iii. The letter is written in Tamil, whereas, the name and address of the respondent/claimant is written in English.

iv. Signature of the respondent/claimant varies with the signature found in Vakalat.

12. After careful scrutiny of the signature and other particulars, the Tribunal observed that the said letter dated 08.07.1995 is an after thought. Though the accident had occurred on 08.07.1995 and F.I.R., was lodged belatedly on 25.08.1995, there was no objection by the appellant-Transport Corporation about the delay in lodging the F.I.R. No suggestion has been made to the respondent/claimant that the cyclist had gone to the middle of the road, which resulted in the accident.

13. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354], has held that,

> "Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

14. In a decision in Union of India v. Saraswathi Debnath [1995 ACJ 980], High Court of Gauhati has held in Paragraph 6 as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

15. Ex.B1 dated 08.07.1995 said to have been given by the respondent/claimant is denied by the claimant for the reason that the signature in the letter varies with the Vakalat. PW.3, one P.Thurai, Police Officer has deposed that a criminal case was pending against the driver of the bus in C.C.No.3322 of 1998. If the driver was not negligence, the police would not have laid charge sheet against him.

16. In the absence of any strong evidence on the side of the appellant to prove that the cyclist got struck in the heap of sand and hit the bus on the rear portion, the defence of the appellant-Transport Corporation is not acceptable. The genuineness of Ex.B1 is not proved by the appellant-Transport Corporation. It is settled law that proceedings before the claims petition, preponderance of probability is the rule. The respondent/claimant has let in sufficient evidence that there is preponderance of probability as to the manner of the accident. The finding of the Tribunal cannot be found fault with on the ground of perversity and therefore, it is confirmed.

17. As regards quantum of compensation, learned counsel for the appellant submitted that the award of Rs.5,11,500/- as compensation for the fracture of L1, Vertebra is excessive. He further submitted that the Tribunal has erred in awarding Rs.70,000/- as compensation towards permanent disability. PW.2, Dr.Saichandran has assessed the disability at 70% and PW.4, Dr.Thiagarajan has assessed the disability at 30%. He also submitted that the Doctors neither followed any guidelines nor conducted any scientific test to assess the disability. As both Doctors have assessed the disability for the same injury, the assessment is overlapping and unsustainable. The panel doctors who assessed the disability only at 50% and therefore, the assessment made by Pws.2 and 4 ought to have been rejected by the Tribunal.

18. Learned counsel for the respondent/claimant submitted that the respondent was treated as inpatient in Government General Hospital between 08.07.1995 and 20.07.1995. Thereafter he was treated as inpatient in Venkatesa Hospital, Palakkad from 21.07.1995 to 25.07.1995. Where, he was diagnosed as having fracture L1 vertebral with paraparesis. The

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondent/claimant was sent to higher centre for treatment. After that, he was admitted in Ganga Hospital on 25.07.1995. Ex.P3 is the discharge summary issued by Ganga Hospital, wherein, diagnosis is mentioned as "Unstable fracture L1 vertebral with paraparesis." During the period of treatment, on 26.07.1995, under general Anaesthesia, a surgery was performed. Surgery notes as mentioned in the discharge summary are given below,

> "the posterior structures of D11-L3 exposed. Fenestration at D12-L1 level revealed the cord was compressed and it was not possible to pain the upcutters. L1 laminectomy performed and retropulsed mass was pushed anteriorly. After fenestration, the fracture stabilised by Harshill rectangle with sublaminar wires on D11, D12, L2 and L3. Haemostasis achieved and wound closed over drain."

The respondent/claimant was discharged on 04.08.1995.

19. During the trial, the Tribunal observed that the respondent/claimant was wearing a belt in the hip. The respondent/claimant, has deposed that he cannot sit or walk properly and there is difficulty in attending natural calls. PW.2 Dr.Saichandran, who has examined the respondent/claimant on 01.08.1999, has deposed that there is fracture of L1 vertibra (spinal cord). The fractured bones were united with K-wires and the respondent/claimant cannot bend. He has further deposed that due to the fracture in the spinal cord, strength on the knees is reduced by 1/5, and the respondent/claimant is using a spinal braze for safety. He cannot stand straight and sleep properly and there is every possibility of losing his sexual potency . He has assessed the disability at 70% and issued Ex.P9, Disability certificate.

20. With regard to marital prospects, PW.4, Dr.Thyagarajan has deposed that on examination of the respondent/claimant, he found three types of injuries,

i) L-1 Vertibra
ii) Backbone D
iii) Spinal cord

The respondent/claimant had been treated for loss of sensation and for loss of reflux of knee and ankle. He has further deposed that there is no sensation below hip and that the nerve leading to the private part is affected. He has also deposed that the respondent/claimant cannot have marital life in future, as he has lost sensation below hip. He has assessed the disability at 30% and issued Ex.P13, Disability certificate.

21. Learned counsel for the appellant submitted that PW.4, Dr.Thyagarajan is not a sexologist and therefore, the evidence with regard to loss of marriage prospects has to be rejected. On examination, PW.4 deposed that the sensor system of the respondent/claimant is affected very much and the reflux is also absent below knee and ankle jerk. The evidence of PW.4 would prove that the respondent/claimant has lost sensation below lower limb, due to the injury in the spinal cord. A

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

surgeon, who has got considerable experience in the field of medicine, can very well assess the damage to a limb or part of an organ.

22. Learned counsel for the appellant submitted that the Tribunal has erred in awarding Rs.3,00,000/- towards loss of earning power. In this context, he strongly relied on the observation made in Ex.P3, Discharge summary

> "The patient can walk well. The patient is better and can do clerical jobs. The patient can be normal."

He submitted that the respondent/claimant has not lost his earning capacity and that therefore the award of Rs.3,00,000/- is excessive. He further submitted that the multiplier method can be applied only if the respondent/claimant has become bedridden or a vegetable due to the injuries.

23. Per contra, learned counsel for the respondent/claimant submitted that the respondent/claimant had sustained severe injuries in the spinal cord. He was treated as inpatient in three hospitals for three different spells and underwent surgeries. The Doctors who treated the respondent/claimant found that he had no sensation below hip and the ankles have diminished. Due to the injuries, he has become disabled and he cannot find any job in future. Learned counsel for the respondent/claimant further submitted that the observation made in Ex.P3, Discharge summary issued by Ganga Hospital that the respondent/claimant can walk, does not mean that he can walk very well as before. The Tribunal has also noticed during the course of trial that the respondent/claimant was wearing a special belt from head to ankle for safety. She further submitted that the respondent/claimant has become totally disabled and he has lost his earning capacity. She also submitted that the respondent/claimant was working as a captain in Mourya International Hotel and was earning a sum of Rs.2,000/- per month.

24. In a decision reported in 2005(1) CTC 38 [United India Insurance Company Ltd. v. Veluchamy], the Division Bench of this Court has set out certain principles in awarding compensation to non-fatal injury cases leading to permanent disability. Paragraph 11 of the said judgment read as follows:

> "11. The following principles emerge from the above discussion:
>
> (a) In all case of injury or permanent disablement "multiplier method" cannot be mechanically applied to ascertain the future loss of income of earning power.
>
> (b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent?
>
> (c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

employment or avocation completely and has to be idle till the rest of his life, in that event loss of income or earning may be ascertained by applying "multiplier method" as provided under Second Schedule to the Motor Vehicles Act, 1988.

(2) Even if so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment or loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

25. On going through the entire material evidence as well as oral testimony of the Doctors, there is ample evidence to prove that consequential to the disability, the respondent/claimant has lost his employment and that he has to be compensated for the lost of future income. The respondent/claimant was said to be a captain at the time of accident. He was aged about 23 years. The Tribunal has determined the income at Rs.1,500/- per month and applied '17' multiplier to the age of the respondent/claimant. The Tribunal has awarded compensation of Rs.3,00,000/- for loss of earning capacity.

26. As stated supra, there is sufficient evidence to show that he has lost his sensation below the lower limb, which has lead to loss of marital prospects. In New India Assurance Company Ltd., vs. Charlie and another [2005 (3) MLJ 118 SC], the Supreme Court has held that Court has to consider the possibility of marriage in the near future and the contribution towards his family will be reduced and therefore, the lesser multiplier has to be applied. It has also held that the Second Schedule to Section 163-A of the Motor Vehicles Act can be taken as guidance for the purpose of assessing of the future loss of income. In the instant case, since the possibility of marriage is ruled out by the Doctors, the multiplier of '17' for determining the future loss of income and the award in respect of earning capacity are confirmed.

27. The Full Bench of this Court in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others [2006 (4) CTC 433], has held that if the injured person is compensated for the loss of earning as well as earning capacity, the permanent disability need not be separately itemised. In the instant case, the respondent/claimant had been compensated for loss of earning capacity as well as permanent disability. Therefore, as per the above judgment, disability compensation of Rs.70,000/- as awarded by the tribunal is liable to be set aside.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

28. In so far as pain and suffering is concerned, the Tribunal has awarded Rs.30,000/- towards pain and suffering. The accident had occurred on 08.07.1995. The respondent/claimant had been treated in various hospitals and suffered different problems from the date of accident. He cannot stand, walk and sit properly and that there is difficulty in attending natural calls. The fracture in the spinal cord and the pressures on the nerves, would cause considerable pain for a long period and that the injured person should be very careful for rest of his life. The award of Rs.30,000/- towards pain and suffering is inadequate and the said amount is enhanced by a further sum of Rs.10,000/-.

29. As regards medical expenses, the Tribunal has awarded Rs.50,000/- on the basis of Ex.P4 (series). It is submitted by the learned counsel for the appellant that the amount mentioned in medical bill Nos.22 and 23 are overlapping to an extent of Rs.11,638 and the said amount has to be deducted from the compensation towards medical expenses. It is settled law that the injured is entitled only to the actual medical expenses incurred by him for treatment. Therefore, the excess amount of Rs.11,638/- is deducted from the compensation towards medical expenses.

30. The Tribunal has awarded Rs.50,000/- towards loss of marital prospects. Learned counsel for the appellant submitted that the said award is liable to be set aside for the reason that no specialist was examined to prove that he has lost his marital prospects. As stated earlier, a surgeon can very well explain the consequences, when the nerve leading to the private part is affected. In the instant case, PW.4 has given a categorical evidence that the nerve leading to the private part of the respondent/claimant is affected very badly. Due to which, he has lost his sensation below the hip (diminished). Therefore, the award of Rs.50,000/- is confirmed.

31. The hotel management industry was blooming in Mid 1990's and today, there is a rapid growth. A person, who enters into the said area is paid well and there is lot of demand for the Hotel Management course now. Had he not suffered any disability, the respondent/claimant would have reached a better position in his field and earned good salary. He has to lose his job in the Hotel and undergo mental agony that he cannot compete with others. Therefore, it would be appropriate to award Rs.10,000/- for mental agony.

32. The Tribunal has awarded Rs.5,000/- towards loss of amenities on account of prolonged medical treatment. It can be reasonably presumed that a person who has sustained fracture on L1 vertebra (spinal cord) and would require the assistance of an attendant for his day to day work, even for attending natural calls. The award of Rs.5,000/- is inadequate. Considering the age of the respondent/claimant and the requirement of assistance for longer period, this Court deems it fit to award Rs.25,000/- towards loss of amenities.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

33. The Tribunal has awarded compensation of Rs.1,000/- as transportation charges and Rs.1,000/- for extra nourishment. The compensation under both these heads is very low. The respondent/claimant would have certainly incurred expenses for extra nourishment during hospitalisation and post operative period for speedy recovery. Therefore, it would be appropriate to award Rs.5,000/- towards extra nourishment. There is evidence to prove that he had been treated as outpatient for some period. With an injury in the spinal cord and loss of sensation below knee, it is not possible to travel in public transport vehicle and he requires constant monitoring. The compensation for transportation expenses is enhanced to Rs.5,000/-.

34. Learned counsel for the appellant contended that while awarding compensation, the Tribunal has awarded interest at the rate of 12% per annum and the same is excessive. The accident had occurred in the year 1995. Considering the rate of interest prevalent in the year 1995, I am not inclined to reduce the rate of interest.

35. In view of the above, the respondent/claimant is entitled to Rs.4,73,442/- with interest at the rate of 12% per annum from the date of claim, till the date of realisation. The apportionment of the award amount is given below:

Loss of earning capacity	:	Rs.3,00,000/-
Medical expenses	:	Rs. 38,442/-
Pain and suffering	:	Rs. 40,000/-
Marriage prospects	:	Rs. 50,000/-
Mental agony	:	Rs. 10,000/-
Loss of amenities	:	Rs. 25,000/-
Transportation	:	Rs. 5,000/-
Extra nourishment	:	Rs. 5,000/-
		Rs.4,73,442/-

The Tribunal is directed to refund the balance amount with accrued interest to the appellant-Transport Corporation, within a period of two months from the date of receipt of a copy of this order.

36. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

WEB COPY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

skm

To

1. The Motor Accidents Claims Tribunal,
(IV Judge, Small Causes Court), Chennai.

2. The Record Keeper,
V.R.Section,
High Court, Madras.

1 cc To Mr.M.Krishnamoorthy, Advocate, SR.16796.
1 cc To Mr.P.Manavalan, Advocate, SR.16601.

C.M.A.No.261 OF 2001

HPR(CO)
RVL 17.04.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/